

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4467 of 1982

AND

SPECIAL CIVIL APPLICATION No 4469 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

JETHISINGH GOPALSINGH & ORS.

Versus

RAJKOT TEXTILE MILLS

Appearance: In both the Special Civil Applications:

MR PJ MEHTA for Petitioners

MR KAUSHAL THAKER for Respondent No. 1

None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 16/01/97

ORAL JUDGEMENT

1. As both these matters have arisen from the same order of the Labour Judge at Rajkot in Application No.3/78 decided on 2nd February, 1980, the same are being disposed of by this common order.

2. The facts of the case, for the decision of these matters, in brief, are being taken from Special Civil Application No.4467 of 1982.

The petitioners are the members of Mahagujarat Majoor Parishad, Ahmedabad, and the workmen, who are in the employment of the respondent-company, Rajkot Textile Mills, Unit of National Textile Corporation, Gujarat Limited, Rajkot. The petitioners have to relieve the weavers working on Weaving Looms in the department of the company. The workload of the petitioners was fixed by registered agreement dated 4-10-1962 arrived at between Mills Kamdar Mandal, Rajkot and the company. As per Clause 14 of the said agreement each of the petitioners has to relieve 4 weavers. The weavers are working 4 loom system i.e. each weaver is minding 4 looms. There were in each shift 17 relievers relieving 68 four loom weavers in the department as per the said agreement. Another agreement has been entered into between the Union, namely, Mills Kamdar Mandal, Rajkot and the management on 2-1-1976, wherein there was reduction of certain categories of employees in different departments including the relievers in the Weaving loom shed department. By this agreement, 3 posts of relievers were reduced in each shift and so six relievers were retrenched in first and second shift. The respondent-company has kept 14 relievers in each shift instead of 17 after the said agreement. The 14 petitioners have been asked to relieve five weavers instead of four as before and thereby increased the workload of each of the petitioners by this agreement. Clause 5 of the agreement dated 2-1-1976 provides that the employees whose workload has been increased due to entrustment of the work of the retrenched employees to them will be paid special wages as specified in the agreement. The provision for this in the agreement was that 2/3 part of the wages of the retrenched employees is to be distributed equally to the employees whose workload has been increased. It is the case of the petitioners that the respondent-mill was paying Rs.42/- to 45/- to each of the petitioners from the date of the agreement dated 2-1-1976 because of the retrenchment of three relievers and each of the petitioners has to relieve five weavers instead of four. As there was no increase in workload of weavers, the respondent no.1 did not pay anything to weavers. The weavers were minding four looms as usual after the agreement dated 2-1-1976. The dispute has arisen from the act of the respondent which abruptly stopped the payment of the special wages which were to be paid to the petitioner from 2-2-1980. The petitioners filed an application under sec.33-C(2) of the Industrial

Disputes Act, 1947 before the Labour Court, Rajkot for computing the benefit of special wages for increased work load as per clause 5 of the agreement dated 2-1-1976. The said application came to be dismissed by the Labour Court, Rajkot under its order dated 28th June, 1982. Hence this Special Civil Application.

3. Another writ petition being Special Civil Application No.4469/82 is by other fourteen relievers of the first shift and they have also filed an application under sec.33-C(2) of the Industrial Disputes Act, 1947, before the Labour Court, Rajkot and their application has been consolidated with the application of the petitioners in Special Civil Application No.4467/82 and both were decided by a common order.

4. The grievance of the petitioners in these Special Civil Applications is that the Labour court has committed serious error of jurisdiction in rejecting the application by taking resort to the decision of the Labour court made under the provisions of the Bombay Industrial Relations Act, 1946, in application No.30/78 filed by Mills Kamdar Mandal against the company decided on 2-2-1980. The said union had filed the aforesaid application for distribution of special wages envisaged in clause 5 of the agreement dated 2-1-1976 equally amongst the weavers and relievers of the weaving looms proportionate to their increased workload. The aforesaid order has been challenged by the petitioner in this Special Civil Application.

5. The validity of the order dated 2-2-1980 has been challenged by the petitioners on manifold grounds, but I do not consider it appropriate to deal with all those grounds except one which according to me is sufficient to allow these Special Civil Applications.

6. The counsel for the petitioners contended that the order dated 2-2-1980 is bad in law as it has been passed without hearing the petitioners. None of the petitioners were impleaded as party to the proceedings being application No.30/78, and as such, their rights to receive the special wages has been jeopardised.

7. On the other hand, the counsel for the respondent contended that the application No.30/78 has been filed by the representative union of which the petitioners are also members, and as such, the said decision is binding on them. It has next been contended that as the application has been filed by the union, the petitioners were not necessary party to that proceedings.

8. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. In these Special Civil Applications, Mills Kamdar Mandal has been impleaded as party i.e. respondent no.3. It is true that the petitioners were the members of the said Mills Kamdar Mandal and the application No.30/78 has been filed by the said union, but it is not in dispute that under the agreement dated 2-1-1976 the special wages are to be paid only to relievers of the weavers and not to all the weavers. The aforesaid agreement has also been entered into between Mills Kamdar Mandal, Rajkot on one hand and the management of the respondent-company on the other. Mills Kamdar Mandal, Rajkot has filed the application under the provisions of the Bombay Industrial Relations Act, for the benefit of the weavers. The petitioners were the members of the said union, but when the order which adversely affect the monetary benefits of the petitioners was likely to be passed, the union should have taken the care to see that they have a right of hearing. It is a case where the union has acted in a manner and fashion where its own members are likely to suffer monetary loss. It is true that by that order some members have been benefitted, but this court cannot be oblivious of the fact that the agreement dated 2-1-1976 contemplates for giving of the special wages to the class of persons only, to which the petitioners belong. I am making these observations only to see whether the order passed in application No.30/78 on 2-2-1980 is sustainable or not. Otherwise, nothing will be construed as decided by this court on merits.

9. The counsel for the respondent does not dispute that the order dated 2-2-1980 passed in application No.30/78 by the Labour court at Rajkot, adversely affect the monetary benefits which the petitioners were receiving. He has also admitted that the petitioners were not the party to that application nor they have been otherwise provided any opportunity of hearing in the matter. It is settled law that an order, even if it is administrative, if it affects civil rights or otherwise affect the monetary benefits of which party concerned is recipient, then before making such an order, the principles of natural justice are to be followed. The respondent no.3 in this case appears not to have acted fairly and reasonably. Being a union of employees, it was obligatory on its part to see that none of its members suffer any loss and further where such an occasion arises, to see that all the members are fairly dealt with, and no order could have been got by it at the cost of its own other members. The union itself has

entered into settlement for the benefits of the petitioners, as alleged by the petitioners, and as such, before filing application No.30/78, it should have taken all the care that the petitioners are not adversely affected without having notice and an opportunity of hearing. Better course would have been in such cases, though I am not expressing any final view, for the union to go for the fresh settlement rather than to have shortcut where the petitioners could not have been party. The respondent no.3, union, has filed the application No.30/78 and it could have filed, but where the prayer in the application made, and its acceptance is likely to put the petitioners to monetary loss, then the decision given by the Labour court may not be correct. It is a case where the petitioners have come up with a case that the respondent no.3 has in collusion with the weavers filed the said application before the Labour court which apparently put them to loss, and as such, the theory of collective representation may not be made applicable in the present case. The order impugned in these Special Civil Applications made in Applications No.2275 and 2276 of 1981, reveals that the petitioners were not granted the relief only on the ground that earlier the Labour court has taken a view that the amount has to be distributed proportionately amongst the relievers as well as the weavers to the extent where the workload is increased. When the order dated 2-2-1980 is not sustainable only on the ground that it has been made in violation of principles of natural justice, the very ground which is made the basis for denial of benefit to the petitioners, cannot be allowed to stand.

10. While dealing with application No.30/78 under the provisions of Bombay Industrial Relations Act, the Labour court should have taken the care that the persons who are likely to be affected by the order should be given an opportunity of hearing. However, on the basis of the facts which have come on record and the agreement dated 2-1-1976, I am satisfied that the order dated 2-2-1980 cannot be allowed to stand as it has been made in violation of the principles of natural justice. The petitioners should have been given an opportunity of hearing. After giving them an opportunity of hearing, the matter could have been decided on merits. It is a case where the petitioners are claiming benefit under an agreement and they were recipient of the same for a considerable period. Thereafter, this Special Civil Application has been filed and the order made will certainly affect their right to receive the special wages, and as such, the order dated 2-2-1980 is ex-facie illegal, as it is made in violation of principles of

natural justice.

11. In the result, these Special Civil Applications are allowed and the order dated 2-2-1980 passed by the Labour court, Rajkot in B.I.R.A. No.30 of 1978 is set aside. But this order has been set aside only on the ground that it has been made in violation of the principles of natural justice and not on merits. Nothing which has been observed by this court in this judgment be taken to be as a decision on merits of the case. These observations have been made only in the context to adjudicate the validity of the order dated 2-2-1980 on the question of principles of natural justice. The Labour court shall decide the matter afresh after giving an opportunity of hearing to the petitioners of these two Special Civil Applications and it shall decide the matter in accordance with law. The claim which has been made by the petitioners under sec.33-C(2) of the Act, 1948, cannot be allowed at this stage because it will depend ultimately on the final decision given by the Labour court, Rajkot in B.I.R.A. No.30 of 1978 after hearing all the parties. However, if ultimately, the matter is decided in favour of the petitioners by the Labour court, Rajkot, in B.I.R.A. No.30 of 1978 then they are at liberty to take action for computation of the benefits etc.. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-